

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION

UNITED STATES OF AMERICA,

v.

Case No. 7:12CR00032

OSAMA MAHMUD MUSTAFA

**FEDERAL PUBLIC DEFENDER'S RESPONSE TO COURT'S ORDER
REGARDING MR. MUSTAFA'S PRO SE MOTION FOR COMPASSIONATE
RELEASE PURSUANT TO 18 USC SECTION 3582(c)(1)(A)(i)**

The Federal Public Defender hereby responds to this Court's order requiring input regarding Osama Mustafa's pro se motion for compassionate release. We advise that the Federal Public Defender will not be filing any additional pleadings regarding the motion.

1. **Background:** Osama Mustafa was convicted by a jury of conspiracy to defraud the United States, conspiracy to commit bank fraud, and conspiracy to commit money laundering. He was sentenced in his absence (owing to his fugitive status) to imprisonment for 240 months on June 24, 2014. ECF 330. Following his apprehension in Jordan, Mr. Mustafa was returned to the United States and was committed to the custody of the Bureau of Prisons on October 9, 2019. His

release date is calculated as May 21, 2031. Sentence Monitoring Computation Data, Exhibit A.

2. **Pro Se Request for Compassionate Release:** Mr. Mustafa has filed a pro se request for compassionate release pursuant to 18 USC Section 3582(c)(1)(A)(i), as amended by the First Step Act of 2018 (ECF 380). He states therein that he has requested release from the warden at his facility (FCI Petersburg) but has received no response. This Court appointed the Federal Public Defender to evaluate Mr. Mustafa's request and determine whether to file an amended request.

3. **Statutory Framework and Sentence Reduction Authority:** 18 USC Section 3582(c)(1)(A)(i) authorizes a sentencing court to reduce an otherwise final term of imprisonment if the court finds "extraordinary and compelling reasons warrant such a reduction . . . and that such a reduction is consistent with applicable policy statements issued by the Sentencing Commission." Although the previous version of the statute only authorized the Bureau of Prisons (BOP) to

move for a sentence reduction for compassionate reasons, the amended statute allows for defense motions provided the defendant has exhausted all administrative remedies by first requesting that the BOP pursue compassionate release. The amendment is rooted in the “documented infrequency with which the BOP filed motions for a sentence reduction on behalf of defendants.” *United States v. Redd*, No. 1:97CR 00006, 2020 WL 1248493, at * 7 (E.D. Va. Mar. 16, 2020).

4. **Mr. Mustafa’s BOP Records:** Mr. Mustafa has been incarcerated since sometime in September 2019 and has been in BOP custody since October 9, 2019. His BOP health records are sparse, indicating only recent treatment for edema (swelling) in his feet. Records submitted under seal as Exhibit B. They do reflect that Mr. Mustafa is 57 years old which places him at higher of severe illness from COVID-19 infection.¹ The Bureau of Prisons reports that as of August 3, 2020, 121 inmates at FCI Petersburg Medium have been

¹ See: *Groups at Higher Risk of Severe Illness*, Ctr. For Disease Control and Prevention, <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/groups-at-higher-risk.html>

tested for COVID-19 (out of a listed population of 1,446 inmates) and one inmate has tested positive.²

5. **Federal Public Defender Position:** Having reviewed Mr. Mustafa's BOP records, including his health records, and considering the dictates of the Compassionate Release statute, the Federal Public Defender advises that no additional pleadings will be filed in support of Mr. Mustafa's request at this time. By nothing in this pleading do we intend to detract from Mr. Mustafa's pro se motion.

Respectfully submitted,

Osama Mahmud Mustafa

By: /s/ Randy V. Cargill
Of Counsel

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² <https://www.bop.gov/coronavirus/>

CERTIFICATE OF SERVICE

I hereby certify that on the 3rd day of August, 2020, I served the foregoing Response upon counsel for the United States by electronic filing and I caused the original thereof to be filed electronically with Julia Dudley, Clerk, United States District Court, 210 Franklin Road, S.W. Roanoke, VA 24011.

By: /s/Randy V. Cargill